IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 118 of 2005

1. Ilam Chand Bansal s/o Shri Amolak Ram
2. Smt. Savita Bansal w/o Shri Ilam Chand Bansal,
Both resident of Kasba & P.S. Bhagwanpur,
District Haridwar …….. Appellants

Versus

1. Prem Chand s/o Shri Bishamber Singh
r/o Village Sultanpur Kunhari P.S. Laksar,
District Haridwar owner of the vehicle
No. U.P. 07C 6304 Matador.
2. Vishnu s/o Shri Jagdish Singh
through Prem Chand s/o Bishamber Singh
r/o Village Sultanpur Kunhari, P.S. Laksar,
District Haridwar driver of the vehicle
No. U.P. 07C 6304 Matador.
3. The United India Insurance Company
Policy cover note No. 465012
Office C-9 Super Commercial Complex
Delhi Road, Haridwar Insurance company of
Vehicle no. U.P. 07C 6304 Matador.
4. Vipin s/o Late Narendra Chandra Pal
r/o Village Jamalpur Kala, P.S. Jawalapur
District Haridwar, owner of the motorcycle
Regd. No. U.A. 08A 3483
5. The United India Insurance Company
Office C-9 Super Commercial Complex
Delhi Road, Haridwar Insurance company of
Vehicle no U.P. 08 A 3483 motorcycle …… Respondents

Sri Parikshit Saini, Advocate for the appellants.
None for respondents 1, 2 and 4.
Sri K.K. Sah, Advocate for respondents 3 and 5.

JUDGMENT

Coram:Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal U/s 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Motor Accident Claim Tribunal/ Additional District Judge, Haridwar vide Award dated 28.07.2004 passed in M.A.C.T. case No. 03 of 2003.

2. The claimants, who are unfortunate parents of deceased Anil Bansal, claimed compensation of Rs. 22,00,000/- for his death in the motor accident on 02.12.2002 when his motor-cycle bearing registration No. U.A. 08A 3483 was dashed by the offending vehicle Matador bearing registration No. UP 07C 6304 resulting in serious injuries to Anil Bansal, who succumbed to those injuries the same day during the course of his treatment in the Hospital. The claimants pleaded that their son Anil Bansal used to earn Rs. 4,000/- per month from his shop.

3. The driver and owner of the offending vehicle Matador did not contest the claim and remained ex parte before the Tribunal. The owner of the motor-cycle denied his liability to pay compensation to the claimants on the plea that the accident did not occur due to the negligence of the deceased and that the motor-cycle being insured with the Insurance Company, the liability to pay compensation to the claimants, if any, would be that of the Insurance Company. The United India Insurance Company Ltd.- the Insurer of both the vehicles i.e. offending vehicle Matador and the other vehicle motor-cycle, too, denied their liability to pay compensation to the claimants on the plea that the deceased did not hold any driving licence at the time of the accident.

4. The claimants examined P.W. 1 Ilam Chand, P.W. 2 Rishipal and P.W. 3 Savita Bansal in support of their claim, whereas the owner of the motor-cycle and insurer of the Matador did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that the claimants' son Anil Bansal died on account of the injuries sustained by him in the motor accident on 02.12.2002; the accident occurred due to the rash and negligent driving of the driver of the offending

vehicle Matador; and the insurer of the offending vehicle Matador was liable to pay compensation to the claimants.

6. As the Tribunal did not find the evidence led by the claimants about the income of the deceased reliable, his income was assessed at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule U/s 163-A of the Motor Vehicle Act. By deducting 1/3rd of the income of the deceased as his personal expenses, the claimants' dependency was assessed at Rs. 10,000/- per annum. Considering the age of the deceased and the claimants, the Tribunal selected the multiplier of '11'. By multiplying the annual dependency of Rs. 10,000/- with multiplier of '11', the compensation was worked out to Rs. 1,10,000/-. The Tribunal further awarded Rs. 2000/- towards Funeral Expenses and Rs. 5,000/- towards Medical Expenses incurred in the treatment of the deceased before his death. Thus, a total sum of Rs. 1,17,000/- was awarded as compensation to the claimants for the death of their son Anil Bansal. The Insurer of the offending vehicle-United India Insurance Company Ltd. was further directed to pay interest @ 8% per annum on the above amount of Rs. 1,17,000/- from the date of the claim petition.

7. Sri Parikshit Saini, the learned counsel for the appellants submitted that the Tribunal has erred in discarding the claimants' evidence about the income of the deceased; in assessing the income of the deceased at Rs. 15,000/- per annum only; and awarding low compensation of Rs. 1,17,000/- to the claimants.

8. Sri K.K. Sah, the learned counsel for the United India Insurance Company Ltd., on the other hand, supported the Award and submitted that as the claimants could not establish the income of the deceased, the Tribunal was left with no other option but to assess his income on the basis of notional income prescribed in the Second Schedule u/s

163 A of the Motor Vehicles Act and as such the compensation of Rs. 1,17,000/- awarded by the Tribunal does not call for any enhancement in this appeal.

9. The findings recorded by the Tribunal that the claimants' son Anil Bansal died on account of the injuries sustained by him in the motor accident on 02.12.2002; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Matador; and the insurer of the offending vehicle was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. Claimants' son deceased Anil Bansal was aged about 21 years at the time of the accident. Though the claimants pleaded that their son Anil Bansal used to earn Rs. 4000/- per month from his shop, no cogent and reliable evidence was adduced before the Tribunal to establish the said income of the deceased. In this state of evidence, the Tribunal has rightly discarded the claimants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 15,000/- per annum on the basis of the notional income requires re-consideration as the same is on the lower side. The notional income of Rs. 15,000/- in the Second Schedule U/s 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident, in the present case, took place in the year 2002. If the depreciation in the purchase value of Rupee during the period between 1994 and 2002, is taken into consideration, the notional income of Rs. 15,000/- prescribed in the year 1994 would in the year 2002, come to at least Rs. 30,000/- per annum. That apart, deceased Anil Bansal being aged about 21 years could have easily earned Rs. 80-85/- per day even as an unskilled labourer. We, therefore propose to recompute the compensation taking the income of the deceased at Rs. 30,000/- per annum.

11. By deducting 1/3rd of Rs.30,000/- as his personal expenses, the claimants' dependency is assessed at Rs. 20,000/- per annum. The multiplier of '11' selected by the Tribunal considering the age of the deceased and the claimants and the fact that the claimants had no income of their own, we are satisfied, is appropriate in the facts and circumstances of the case. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '11', the compensation works out to Rs.2,20,000/-. By adding further sum of Rs. 2,000/- awarded by the Tribunal towards Funeral Expenses and Rs. 5,000/- for Medical Expenses incurred on the treatment of the deceased before his death, the claimants become entitled to receive Rs. 2,27,000/- as compensation for the death of their son Anil Bansal in the motor accident.

12. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Courts should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 supreme Court Cases 236,** observed in para 10:

> "10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

13. The compensation of Rs. 2,27,000/- to the claimants for the death of their son aged about 21 years, when examined in the context of the dictum of the Apex Court in the case of **Manju Devi and another Vs. Musafir Paswan and another** reported in **2005(1) TAC 609 (SC),** we are satisfied, is just and proper in the facts and circumstances of the case .

14. For the foregoing reasons, the appeal filed by the by the claimants u/s 173 of the Motor Vehicles Act is allowed in part. The compensation of Rs. 1,17,000/- awarded by the Tribunal is enhanced to Rs. 2,27,000/- (Two Lakhs Twenty Seven Thousands only). The claimants is also entitled to receive interest on the enhanced amount of Rs. 1,10,000/- (Rupees One Lakh Ten Thousands only). With a view to avoid any delay in computation of the amount of interest by the Claims' Tribunal, we deem it proper to quantify the amount of interest ourselves. Considering all the relevant factors, we quantify the amount of interest at Rs. 15,000/-. Respondent no. 3-United India Insurance Company Ltd., the Insurer of the offending vehicle Matador, is directed to pay a total sum of Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousands only) {Rs. 1,10,000/- as enhanced compensation + Rs. 15,000/- towards interest} to the claimants within a period of three months from today.

15. No order as to costs.

(Rajesh Tandon, J.) 28.09.2006

(Rajeev Gupta, C.J.) 28.09.2006

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